

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

-----X **Docket#**  
UNITED STATES OF AMERICA, : 07-CR-736 (CPS) (JMA)  
: 08-CR-44  
:   
- versus - : U.S. Courthouse  
: Brooklyn, New York  
ARTHUR DOZORTSEV AND :   
NIKOLAI DOZORTSEV, : April 2, 2009  
Defendant :  
-----X

TRANSCRIPT OF CRIMINAL CAUSE FOR  
VIOLATION OF PRETRIAL RELEASE  
BEFORE THE HONORABLE JOAN M. AZRACK  
UNITED STATES MAGISTRATE JUDGE

A P P E A R A N C E S:

For the Government: **Benton Campbell, Esq.**  
United States Attorney

BY: **Steven Tiscione, Esq.**  
Assistant U.S. Attorney  
271 Cadman Plaza East  
Brooklyn, New York 11201

For Defendant N. Dozortsev: **Barry Zone, Esq.**

For Defendant A. Dozortsev: **Edward Sapone, Esq.**

Official Transcriber: **Rosalie Lombardi**  
**L.F.**

Transcription Service: **Transcription Plus II**  
821 Whittier Avenue  
New Hyde Park, N.Y. 11040  
(516) 358-7352  
Transcriptions2@verizon.net

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1                   THE CLERK: Criminal Cause for Violation of  
2 Pretrial Release, case number 07-cr-736 and 08-cr-44,  
3 United States v. Nikolai Dozortsev and Arthur Dozortsev.

4                   Counsel, please state your name for the record.

5                   MR. TISCIONE: Steven Tiscione for the  
6 government.

7                   Good afternoon, your Honor.

8                   MR. ZONE: Barry Zone for Nikolai Dozortsev.

9                   Good afternoon, your Honor.

10                  MR. SAPONE: And good afternoon, your Honor.

11                  My name is Edward Sapone and I am here for  
12 Arthur Dozortsev, along with my associate Brianna Serra  
13 (phonetic).

14                  MS. SERRA: Good afternoon, your Honor.

15                  THE COURT: Good afternoon.

16                  Counsel, have you explained to your clients  
17 that they have been charged in this complaint with  
18 violating their conditions of release?

19                  Mr. Sapone, did you explain that to your  
20 client?

21                  MR. SAPONE: I did; yes.

22                  THE COURT: Mr. Zone?

23                  MR. ZONE: Yes, your Honor.

24                  THE COURT: Okay. And what is the government's  
25 position about bail?

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1                   MR. TISCIONE: Your Honor, given the fact that  
2 the defendants were released on a very substantial bond,  
3 both of them, the defendant Nikolai Dozortsev was even on  
4 home detention with electronic monitoring and yet the  
5 defendants combined to commit over 180 acts of Medicaid  
6 fraud while on release. The government's position is  
7 that they should be remanded without bail.

8                   THE COURT: Who wants to go first?

9                   MR. SAPONE: Would Nikolai like to go first?

10                  MR. ZONE: Sure. Your Honor, the first thing I  
11 would explain to the Court and I have been in touch with  
12 Ms. Lee who is the person from pretrial who has been  
13 supervising Mr. Dozortsev, her position --

14                  THE COURT: (inaudible).

15                  MR. ZONE: I'm sorry?

16                  THE COURT: Yes, go ahead.

17                  MR. ZONE: Her position is that the only  
18 modification she suggests that instead of being able  
19 to --

20                  THE COURT: Hold on. Does Ms. Lee know the  
21 nature of the violation? Do you know the nature of the  
22 violation?

23                  PRETRIAL SERVICES OFFICER: It's a healthcare  
24 charge fraud --

25                  THE COURT: Yes.

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1                   PRETRIAL SERVICES OFFICER: -- is my  
2 understanding.

3                   THE COURT: Yes. And are you recommending the  
4 be released?

5                   PRETRIAL SERVICES OFFICER: I recommend Nikolai  
6 Dozortsev be released.

7                   THE COURT: Why?

8                   PRETRIAL SERVICES OFFICER: Because he has been  
9 compliant on pretrial services supervision. He is on  
10 home detention.

11                  THE COURT: Describe to me then, excuse me,  
12 what Nikolai has committed since he has been on pretrial  
13 release.

14                  MR. TISCIONE: 156 acts of healthcare fraud by  
15 submitting false claims for Medicaid benefits while he  
16 has been on release. I mean the idea that he has been  
17 compliant by pretrial services --

18                  THE COURT: There was just a disconnect here  
19 because I know --

20                  MR. TISCIONE: He's also been convicted.

21                  THE COURT: Excuse me. Let me just finish.

22                  MR. TISCIONE: Sorry. I apologize.

23                  THE COURT: I read the complaint, as you know.  
24 I get here today and I read the pretrial report and I am  
25 thinking is this -- is the wrong name there? I mean, I

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1 just don't understand. And he's pled guilty.

2 MR. TISCIONE: He's pled guilty. He's on  
3 pretrial -- he's on release pending sentencing.

4 MR. ZONE: Judge, this isn't the case.

5 THE COURT: And how much of the -- tell me the  
6 period of time, like when you allege it began.

7 MR. TISCIONE: The healthcare fraud?

8 THE COURT: Yes.

9 MR. TISCIONE: The healthcare fraud began in  
10 2003. He was charged with healthcare fraud between 2003  
11 and October of 2007 in an indictment.

12 THE COURT: Right.

13 MR. TISCIONE: That was what he was -- he was  
14 arrested in October of 2007.

15 THE COURT: Right.

16 MR. TISCIONE: And --

17 THE COURT: And that's when he appeared before  
18 Judge Gold.

19 MR. TISCIONE: And that's when he appeared  
20 before Judge Gold. And the offense that he is charged  
21 with now is committing healthcare fraud between the date  
22 of his release, October 15, 2007, and March 1, 2009.

23 THE COURT: And so did he essentially just keep  
24 doing what he was doing before?

25 MR. TISCIONE: Yes.

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1                   THE COURT: Or did he vary it or tailor it?

2                   MR. TISCIONE: The exact same thing; just kept  
3 doing it.

4                   THE COURT: And this would have been something  
5 he could have done and still ostensibly complied with his  
6 pretrial conditions.

7                   MR. TISCIONE: Meaning --

8                   THE COURT: I mean shown up and reported?

9                   MR. TISCIONE: Yes, absolutely.

10                  PRETRIAL SERVICES OFFICER: Well, we're asking  
11 that he could be on house arrest, full lock down. He  
12 currently, prior to his arrest, he had a curfew to be  
13 allowed out of the house.

14                  THE COURT: But how blatant. I mean, this is  
15 somebody who not only was released and is advised at the  
16 time of release because I am sure Judge Gold does like I  
17 do, if you commit a crime while you're out on this bond,  
18 that is number one, another crime. Why should the Court  
19 accord this defendant any level of trust anymore? I mean  
20 he did this right under your nose.

21                  MR. ZONE: That's not the case, your Honor.

22                  THE COURT: Okay, Mr. Zone. I am sorry.

23                  MR. ZONE: I'm really sorry.

24                  THE COURT: Let me -- you come join our  
25 conversation.

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1                   MR. ZONE: I have been -- this is what I have  
2 done for the past year of my life, this case.

3                   THE COURT: No.

4                   MR. ZONE: I swear to God. That's what I have  
5 been doing in this case for the past year. So there's so  
6 much here that's giving you a misapprehension of what  
7 went on; okay? Now, we started with this, and I know  
8 you've read -- Mr. Tiscione has spent a tremendous amount  
9 of time putting this together and it explains this very  
10 extremely sophisticated on and offshore crime that took  
11 place that Mr. Dozortsev -- when all was said and done,  
12 we resolved it all; okay? We resolved it with a plea.  
13 We came up with a number. We came up with a forfeiture  
14 amount.

15                  And after we basically -- during our plea  
16 negotiations, Mr. Tiscione said by the way, we have a  
17 \$12,000 Medicaid fraud situation that we want him to  
18 plead guilty to for acts that he committed between 2003  
19 and 2006. That's a three-year period. I said why, we're  
20 pleading guilty to money laundering. We've come up with  
21 a number. You realize there were three defendants now;  
22 there was somebody who -- Mr. Shargel represented and  
23 then Mr. Sapone's client and my client. So this was  
24 really -- it took us a year to get this case resolved.

25                  And I also, not only dealt with Mr. Tiscione, I

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1       dealt with their forfeiture division who said every time  
2       I would call, well that sounds fair but I've really got  
3       to make a call and get it approved but that sounds like a  
4       fair -- and I would get an e-mail that was fairly  
5       inconsistent with the conversation that I would have.

6               And then we were talking about how are we going  
7       to figure out the Medicaid issue. And he said to me 100  
8       percent, I will speak with Medicaid and we will find out  
9       what the total number was. This was in the end -- when  
10       did he plea guilty, Steve?

11               MR. TISCIONE: November '07.

12               MR. ZONE: Okay.

13               MR. TISCIONE: So November of '07.

14               MR. ZONE: November; okay. So up to a few  
15       months ago, okay, Medicaid had presumably given all of  
16       their information to the United States Attorney's Office.  
17       Okay? So I understand this looks like this has been  
18       going on.

19               Now I will tell you exactly what my client's  
20       issue is, he's been to the doctor three times, okay, in  
21       the past 18 months to his cardiologist. He has high  
22       blood pressure and high cholesterol. I have high  
23       cholesterol, too. The reality is he's had a few  
24       prescriptions refilled and that's the extent of his  
25       medical treatment.

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1           When I told him, because we didn't know about  
2 the Medicaid aspect of this case when he first got  
3 arrested and when he was out on bond, when I told him  
4 about it, he immediately canceled his Medicaid because in  
5 this community and many communities, there are people  
6 that are agents of insurance companies that say that  
7 you're entitled to certain types of insurance and he was  
8 counseled that he was based on his income, things have  
9 been bad, the economy is bad. He's not doing very well.  
10 He has a family of four to support. His wife doesn't  
11 work. And realistically, he's been to the doctor three  
12 times. He had a handful of refills for blood pressure  
13 and cholesterol medication.

14           So I know how this looks but I also know what  
15 went into getting this case resolved. Mr. Dozortsev has  
16 not continued to commit crimes and if Mr. Tiscione who at  
17 the very beginning of this said, well do you know what,  
18 we're really just going to look to use this as relevant  
19 conduct at sentencing if your client disagrees with us.  
20 That's really what this comes down to. Okay? And  
21 sentencing is a couple of months ago and now based on  
22 these allegations, it's my view that I need to speak -- I  
23 need to find out from Medicaid what their allegations are  
24 because it seems to me that if the numbers are what he  
25 says they are, then it could very well be that whatever

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1      pharmacy is or wherever they're refilling his  
2      prescriptions, are playing games. He's told me exactly  
3      what's gone on.

4                   I am in touch with him every day of my life for  
5      sentencing; okay? There's a forfeiture issue. We're  
6      resolving the forfeiture issue. This is all a very  
7      ornate resolution to a case that quite frankly, this will  
8      not even change his guideline exposure. Maybe the Judge,  
9      Judge Sifton, will think, you know, if there are a few  
10     times that he used -- he went to a doctor and Medicaid  
11     paid for it, he shouldn't have, but that's certainly  
12     something we can argue at sentencing.

13                  Like I said, this isn't the kind of situation  
14     that Mr. Tiscione spells out here. I would suggest that  
15     at a bare minimum, we're not talking about years before  
16     sentencing. Give us an opportunity where if you --  
17     pretrial is recommending that he be home detained. My  
18     position is that he should be able to support his family.  
19     If the Court is not comfortable with that and requires  
20     him to be at home, then he will be at home. He can work  
21     from home but he needs to support his family.

22                  As you know before sentencing, courts sometimes  
23     will even give time to surrender. This is all part of a  
24     sentencing argument, a sentencing issue and that's where  
25     it belongs. I tell you, he did not commit another act of

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1 insurance fraud and all of these allegations, I have no  
2 information about. I have spoken with my client. At a  
3 bare minimum, he's been fully compliant and I applaud,  
4 you know, of course pretrial for standing her ground.

5 All I am saying to you, Judge, is give the guy  
6 an opportunity to argue these sentencing issues so we can  
7 argue to Judge Sifton that it shouldn't impact his  
8 sentence.

9 THE COURT: But you're making it sound like  
10 it's a mistake the drugstore might have made.

11 MR. ZONE: It may be. I have been given some  
12 information that certainly believes me to believe that.  
13 It doesn't --

14 THE COURT: Do you want to describe to me the  
15 nature of the conduct? I mean, I don't want to fault  
16 pretrial because he could ostensibly be in compliance and  
17 you wouldn't know he was committing financial crimes.  
18 You would have no way of knowing.

19 MR. TISCIONE: Sure. The defendant's submitted  
20 fraudulent affidavits to Medicaid every year since 2003  
21 in which he misrepresented his assets and income and  
22 applied for benefits to which he was not entitled. And  
23 then over the course of virtually on a weekly basis,  
24 since 2003, has collected Medicaid benefits.

25 And this defendant, as I said, committed 156

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1 acts since the day of his arrest on October 15, 2007  
2 including over \$50,000 worth of healthcare benefits since  
3 that time. The government did not know about this most  
4 recent Medicaid fraud until after the defendant pled  
5 guilty and in preparation for sentencing, the government  
6 contacted Medicaid to find out the precise amount of the  
7 loss. And that's when we were first informed by Medicaid  
8 officials that these defendants were still receiving  
9 Medicaid benefits to that day. So we went back --

10 THE COURT: So they were not suspended from the  
11 Medicaid program --

12 MR. TISCIONE: No, and that --

13 THE COURT: -- at the time of the plea?

14 MR. TISCIONE: No, they were not. And I fault  
15 Medicaid every bit as much for not terminating their  
16 benefits the second they were arrested but they didn't.  
17 And I didn't even know about it until we contacted  
18 Medicaid after their plea to prepare for sentencing. And  
19 it took another two months after that to get the Medicaid  
20 records from Medicaid before I could bring this action.

21 THE COURT: So the plea was like a blip on  
22 their screen. I mean, was the criminal activity after  
23 the plea the same as the criminal activity before the  
24 plea?

25 MR. ZONE: I don't know what the criminal

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1 activity is, Judge. Mr. Dozortsev saw the doctor since  
2 the plea, the cardiologist, twice, two times. And  
3 there's maybe been one refill of medication, okay? I  
4 really am looking at this and reading all of this and I  
5 can't convey to the Court how extensive our negotiation  
6 was to resolve this case and how many calls went back  
7 between myself, Mr. Tiscione, and all --

8 THE COURT: But you -- go ahead.

9 MR. ZONE: I just tell you, this was -- and the  
10 day of the plea, we got a final number, it was \$12,000  
11 over a three year period. So I can just say to you this  
12 is --

13 THE COURT: Yes, but as of the day of the plea  
14 it was \$12,000 or maybe -- I don't know what it was but  
15 the trouble is, there was conduct after the plea.

16 MR. ZONE: But not 100 -- how many acts?

17 MR. TISCIONE: 156.

18 MR. ZONE: I don't know 156 --

19 MR. TISCIONE: But not since the plea.

20 MR. ZONE: It wasn't since the plea, 156 acts.  
21 He's saying that since before the beginning of the case.

22 THE COURT: How many since the plea? I mean  
23 then it starts to -- you might want to suggest these are  
24 mistakes but it depends upon how many there are since the  
25 plea.

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1                   MR. TISCIONE: Since the plea there were 36.

2                   MR. ZONE: And I am telling you, he was at the  
3 doctor twice and maybe refilled a couple of times. And I  
4 have spoken to the client extensively. I am in touch  
5 with the client every day. I am in touch with the  
6 government almost every day. This is not some case that  
7 sat on a back burner. We're all preparing for  
8 sentencing. They all know how much they have to lose.  
9 And this plea has been so extensive -- I have never  
10 negotiated a plea in my life as I have negotiated this  
11 plea.

12                   And I would say to you, Mr. Dozortsev would not  
13 do something as stupid and as simple as this under these  
14 circumstances unless his understanding was accurate. So  
15 my position is, let us argue this at sentencing because  
16 this is going to be a sentencing issue.

17                   THE COURT: Do you want to be heard,  
18 Mr. Sapone?

19                   MR. SAPONE: Yes, I would. May it please  
20 your Honor and the government and all the folks at side-  
21 bar, Ms. Lee is recommending for Arthur Dozortsev not  
22 even an electronic bracelet or home monitoring.

23                   UNIDENTIFIED FEMALE VOICE: Her name is Rivera.

24                   MR. SAPONE: It's actually Ms. Rivera. Excuse  
25 me. Just a bond, an additional bond. He's already out

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1 on a \$1 million bond. They suggest no bracelet, no home  
2 detention, just an additional bond secured by property  
3 and signatures.

4                   What I suggest the Court consider --

5                   THE COURT: No, I think she suggests -- well I  
6 have electronic monitoring but go ahead.

7                   MR. SAPONE: I think what she said was a 9 p.m.  
8 curfew and after that, it would be the monitoring but he  
9 doesn't -- he can be at liberty until 9 p.m.

10                  But in any event, your Honor, he owns an  
11 apartment here in Manhattan where he lives. His fiance  
12 is here in court, as well as his family. His fiance just  
13 recently moved into that apartment.

14                  THE COURT: What do they do for a living?

15                  MR. SAPONE: He works for Dozortsev and Sons  
16 Liquors, as a salesman. So he sells the wines locally  
17 for the company.

18                  THE COURT: How was he ever entitled to  
19 Medicaid?

20                  MR. SAPONE: Meaning initially? Because I  
21 think the application --

22                  THE COURT: Whatever; don't answer that.

23                  MR. SAPONE: Sure. In any event, the apartment  
24 has \$600,000 of equity. It's an apartment that he and  
25 his fiance --

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1                   THE COURT:  Wasn't it already posted?

2                   MR. SAPONE:  No, a different apartment was.

3                   MR. TISCIONE:  It was originally posted.

4                   THE COURT:  Oh.

5                   MR. TISCIONE:  But then that property was  
6 removed in substitution for another property.  So it's  
7 not currently --

8                   MR. SAPONE:  So that's a lot.  I mean, most  
9 respectfully, it's a lot of money we're talking about if  
10 you wanted to add the \$600,000 to the million.  There's  
11 moral suasion because he would have no place to live and  
12 his fiance would have no place to live.  His fiance can  
13 sign a bail bond.  His father is in court, who has assets  
14 at around \$1 million.  He can sign a bond if you thought  
15 that was necessary.

16                  But basically, I don't think it is and here's  
17 why.  What this boils down to as to Arthur Dozortsev and  
18 no disrespect to the folks to my left, but there's a lot  
19 of large numbers being thrown around, 156 instances of  
20 this and all of these hundreds of thousands of dollars of  
21 that.  As this case relates to Arthur, it is actually  
22 only \$10,000 where he went to the doctor or got medicine  
23 27 times.  So of the 160 or 70 instances, only 27 are  
24 relating to Arthur and of all of the money that was  
25 gained, if you will, it only is \$10,000.

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1           And so what we have is a guy who allegedly was  
2 going to the doctor and getting medicine. Now what's  
3 interesting, your Honor, about this is that he was  
4 released in this case in October of 2007.

5           THE COURT: Right.

6           MR. SAPONE: All right. But he was first  
7 accused of the healthcare fraud on August 14 of 2008. So  
8 the first time he knew that there was an accusation in  
9 the world against him concerning this conduct of going to  
10 the doctor and getting medication, was August 14, 2008.  
11 He immediately applied for private insurance, Oxford,  
12 which I have proof of and I would like to hand it up.  
13 And it's Oxford Benefits, the effective date here on the  
14 form is August 8, 2008. So he's told in August of '08,  
15 hey we're accusing you in a superseding indictment of  
16 going to the doctor and getting medication when you  
17 shouldn't be. So he immediately goes and gets private  
18 insurance that same month.

19           That goes until January 31 of this year, of  
20 '09, at which point he switches to Aetna and he's had  
21 insurance the whole time. So there would be no reason to  
22 present a Medicaid card at a doctor's office or a  
23 pharmacy, at least from August of '08 until now because,  
24 in fact, he was fully covered by private insurance.

25           So three months after the government tells him,

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1       hey Mr. Dozortsev, we're accusing you of healthcare fraud  
2       in the superseder, he accepts responsibility fully to the  
3       count of healthcare fraud which is Count 19 in S-3,  
4       superseder number 3 and he pleads guilty and accepts  
5       responsibility.

6                   Your Honor asked a very good question as to  
7       Nikolai Dozortsev, well how many times did he get the  
8       benefit, go to the doctor or get medicine after the plea?  
9       And I don't know what the answer was because it doesn't  
10      relate to my client but here our position is zero. The  
11      government's position is two; that he either went to the  
12      doctor once and got medicine once or got medicine twice  
13      or some combination.

14                  So that's what we have. And what Mr. Zone was  
15      alluding to earlier was that we spent months negotiating  
16      the disposition. And what's relevant about it is not  
17      just that we negotiated, but that we asked the government  
18      who was professional the whole time, give us the extent  
19      of the healthcare fraud, how much money are we talking  
20      about because we have to accurately pay restitution. And  
21      we agreed to pay all of it as it relates to Arthur. In  
22      other words, if it was \$30,000 in doctor visits and  
23      medicine that he gained that he shouldn't have through  
24      the Medicaid, we were going to pay every dime of it back.

25                  And I don't have the exact number with me but

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1 it's around \$30,000 and that number was gotten -- I  
2 remember sitting in the diner across the park on the day  
3 of the plea and the number was \$30,000 and we came right  
4 into court and we said fine, \$30,000 it is. And he  
5 started paying it already. So the point is, we didn't  
6 know about any of it and nothing happened after the plea.

7 Now with respect to the Court's consideration  
8 of danger to the community and risk of flight, I suggest  
9 to your Honor that the only danger relevant here,  
10 arguably is that hey, this man is going out to the doctor  
11 and getting medicine when he shouldn't be. That no  
12 longer exists because he has private insurance in effect  
13 through Aetna.

14 With respect to risk of flight, he's been  
15 working full time since his release in 2007. He's  
16 complied with pretrial services. He's traveled and  
17 returned to New York. He has submitted himself to random  
18 drug testing and in each instance has passed that,  
19 meaning the results were negative.

20 And I want to correct something in the pretrial  
21 report, it says on page 1 that he's abused marijuana.  
22 That is old information prior to the arrest. It's not  
23 new.

24 Now since the plea, since the plea in November  
25 of '08, I can tell you that he's been continuing to work

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1 full time, complying with pretrial, traveling and  
2 returning, passing every drug test and working on the  
3 sentencing with his lawyer almost on a daily basis.  
4 Almost on a daily basis does this man call my office or  
5 come to my office to work on sentencing because his range  
6 is 18 to 24 months. And he wants to get probation.

7 And he has devoted his life with his family and  
8 his fiance to do nothing but work full time and work with  
9 his lawyer getting letters, doing community services --  
10 and he's done it all. I have in my office, your Honor,  
11 and I think Ms. Serra probably has the accurate number  
12 but around 100 letters from folks in the community  
13 ranging from a local senator, Kruger, in Brooklyn here in  
14 Kings County to family members to friends, to folks he's  
15 met overseas; over 100 letters. And he works with me in  
16 preparing my sentencing submission for Judge Sifton. We  
17 were just interviewed by probation. The very day after  
18 the interview, we were back downtown with all the  
19 financial to give to the probation officer. And so he's  
20 complied in every way.

21 He's responsible. He has no reason whatever to  
22 flee this jurisdiction. But if your Honor believes that  
23 because he allegedly went to the doctor 27 times or got  
24 prescription medication, none of which happened after the  
25 plea, if you believe that the bond should be augmented by

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1 offer of the place he and his fiance live in, \$600,000 of  
2 equity, and the two signatures of his father and fiance  
3 here in court.

4 THE COURT: Do you see these defendants -- do  
5 you see significant differences between them in terms of  
6 the conduct post-plea?

7 MR. TISCIONE: Post-plea, there's only minimal  
8 --

9 THE COURT: Well, I say post -- I mean, why  
10 don't you arrest what Mr. Sapone said about him going and  
11 getting the private insurance and --

12 MR. SAPONE: Oh, let me hand it up, please. I  
13 showed Mr. Tiscione earlier. The first one is Oxford and  
14 the second is Aetna.

15 THE COURT: Yes. Go ahead.

16 MR. TISCIONE: Well one difference obviously is  
17 the fact that Nikolai Dozortsev has continued to commit  
18 Medicaid fraud well after the plea. I believe Arthur  
19 Dozortsev only committed two acts after the plea. I  
20 don't know why he would have committed those acts if he  
21 had private insurance since August but it's there  
22 nonetheless.

23 I think there's a couple of things that  
24 your Honor should keep in mind. Number one, I certainly  
25 do not dispute what both defense attorneys have said.

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1 This has been a very long negotiated plea disposition in  
2 this case but I submit to you, that's completely  
3 irrelevant because quite frankly, if the government had  
4 known about any of this conduct, we would have moved to  
5 revoke their bonds as soon as we found out about it.

6 The fact that we didn't find out about it until  
7 after their pleas doesn't mean that they should somehow  
8 be given some benefit for that. We only found out about  
9 it recently. The fact is, they're now -- they now stand  
10 before your Honor as convicted felons, not in a position  
11 where they're being released pretrial. And as your Honor  
12 knows, under 18 USC 3143(a)(1), the standard for bail for  
13 post-conviction, pre-sentence is a much higher standard.

14 The defendants have to prove by clear and  
15 convincing evidence that they are neither a risk of  
16 flight nor a danger to the community. By being convicted  
17 for serious crimes, including money laundering, these  
18 defendants are presumed to be a danger to the community  
19 and I think the fact that they went out and committed all  
20 of these acts of crimes while they were out on release  
21 just demonstrates how dangerous they are. And danger  
22 doesn't have to be that they're going to go out and  
23 commit violent crimes. Danger could be that they're  
24 going to go out and defraud the government or defraud  
25 other people.

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1           And I think it's also worth noting that these  
2 defendants have very strong ties overseas. Both of these  
3 defendants have made frequent, foreign travel, obviously  
4 not while they've been on pretrial release but prior to  
5 that they have. Both defendants had huge bonds. They  
6 had many people sign the bonds for them and yet they  
7 continued to commit crimes, even though they were  
8 specifically advised by the judge that committing any  
9 crime while they were on released would be a violation of  
10 their condition.

11           I mean the argument that Arthur Dozortsev  
12 didn't know that we charged him with healthcare fraud  
13 until August is ridiculous. We don't have to tell him  
14 that he's being accused of healthcare fraud for him to  
15 know that it's illegal to submit a false affidavit to  
16 Medicaid, for him to know that he can't commit any crime  
17 while he's on pretrial release.

18           The fact that he wasn't charged for the  
19 Medicaid fraud at his initial arrest makes no difference.  
20 The fact is, he committed at least 27 acts of healthcare  
21 fraud since he was released on bond.

22           MR. SAPONE: The significance, your Honor, goes  
23 to danger to the community and the fact remains that when  
24 Arthur Dozortsev was confronted with the accusation on  
25 August 14, 2008, he immediately got private insurance and

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1 has used it ever since.

2 MR. ZONE: And I will speak to the private  
3 insurance issue. Mr. Dozortsev, unlike Arthur Dozortsev,  
4 he has a family of four. He's four months in arrears on  
5 his mortgage. He is completely broke, your Honor. He  
6 owes everybody. So I would indicate that he canceled his  
7 insurance, his Medicaid when I was informed that there  
8 was some issue with Medicaid. He canceled it.

9 And then when -- after a couple of months went  
10 by and he realized they had no way to support their  
11 family with medical insurance or any of that necessary  
12 coverage, they reapplied. So I would just say,  
13 your Honor, that these are issues that we would pray you  
14 let us litigate in front of Judge -- this is a sentencing  
15 issue. It doesn't change the guidelines.

16 THE COURT: Well, it's not. You say it's --  
17 yes, it is a sentencing issue but it's also an issue  
18 about whether they committed a crime while they were out  
19 on a bond.

20 MR. ZONE: I understand.

21 THE COURT: Yes, I agree, it's a sentencing  
22 issue.

23 MR. ZONE: I understand that but it's not that  
24 simple. It's not that clear that they committed a crime.

25 MR. TISCIONE: Judge, I would --

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1                   MR. ZONE: It's not that clear, your Honor. I  
2 really -- there's so much that I would submit we can show  
3 that they didn't commit that crime, your Honor.

4                   MR. TISCIONE: Judge, I would suggest that  
5 defense counsel's own statements in the last five minutes  
6 have proven that their clients have committed crimes.  
7 Mr. Dozortsev owns a \$600,000 apartment. Mr. Arthur  
8 Dozortsev -- I'm sorry, it's a \$1.2 million apartment  
9 that he has \$600,000 in equity in. Nikolai Dozortsev  
10 lives in a \$900,000 house and that's not even including  
11 the \$2 million commercial property they own in New Jersey  
12 and all of the foreign properties they own. To suggest  
13 that they even might qualify for Medicaid is outrageous.

14                  THE COURT: It's beyond me.

15                  MR. ZONE: Your Honor, it's not the case.

16                  MR. TISCIONE: It's outrageous.

17                  MR. ZONE: It's just not the case. All of the  
18 things that he's talking about right now have been  
19 resolved as part of our resolution --

20                  MR. TISCIONE: They haven't been resolved.

21                  MR. ZONE: -- to the case.

22                  MR. TISCIONE: They haven't been resolved.

23 They've been resolved in the sense that the forfeiture  
24 has been agreed to. That certainly doesn't suggest that  
25 they don't own the properties anymore.

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1                   MR. ZONE: On the date that he pled guilty, I  
2 had a conversation with Mr. Weitz in their forfeiture  
3 division and I said how much money do we have to pay that  
4 you're saying his exposure is on the --

5                   MR. TISCIONE: Because the Medicaid fraud that  
6 they were charged with --

7                   MR. ZONE: -- and he gave us the number.

8                   MR. TISCIONE: -- was from 2003 to 2006. This  
9 is Medicaid fraud between the date of the arrest on  
10 October 15, 2007 --

11                  MR. ZONE: But --

12                  MR. TISCIONE: -- to March 1, 2009. That was  
13 not included in the calculation. The government had no  
14 idea that that was occurring until recently.

15                  THE COURT: But I don't understand -- let me  
16 ask you a question. I mean it was clear to the  
17 defendants because they entered pleas and had very  
18 skilled lawyers, what the crime was here. I mean, there  
19 was no question about the Medicaid fraud.

20                  MR. SAPONE: And the point that Arthur wants to  
21 raise, your Honor --

22                  THE COURT: Right? Is that right?

23                  MR. TISCIONE: That's correct.

24                  MR. SAPONE: -- is --

25                  THE COURT: So there should be no question that

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1 they had notice of what they could and couldn't do and  
2 what is Medicaid fraud and what isn't.

3 MR. TISCIONE: Absolutely.

4 THE COURT: And you're saying that there were  
5 false claims post the plea.

6 MR. TISCIONE: Yes, although again for Arthur  
7 Dozortsev, it was only two claims that we know about.  
8 For Nikolai Dozortsev, post-plea there --

9 THE COURT: Right, post-plea.

10 MR. TISCIONE: -- were 32 -- sorry, 36 false  
11 claims.

12 MR. SAPONE: Your Honor, if I may? This is  
13 very important. You raised an issue. You say they were  
14 on notice. The moment, under this rubric Arthur  
15 Dozortsev was "on notice" August 14, 2008, he immediately  
16 got Oxford private insurance and then Aetna and has  
17 always had private insurance since then.

18 His claim is post-plea zero times that he used  
19 anything concerning Medicaid and here's why. He has  
20 common sense. If he has -- if the plea is November of  
21 2008, but he has private insurance that's being paid for  
22 every single month back from August of 2008, why would he  
23 use Medicaid after November of 2008 when he has private  
24 insurance in place through Oxford?

25 THE COURT: But I mean frankly, he was

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1 arraigned on this -- he was arraigned in October '07.

2 MR. SAPONE: Not on healthcare fraud. This is  
3 a superseding indictment, your Honor.

4 MR. TISCIONE: But he doesn't need to be told  
5 that it's illegal. It's a crime.

6 MR. SAPONE: We're talking about the notice.

7 MR. TISCIONE: I don't care that he wasn't  
8 charged with it until October.

9 THE COURT: How many false claims would there  
10 be for Arthur post-October 2007?

11 MR. TISCIONE: October '07? All of them; 27.

12 MR. SAPONE: He's put on notice on August 14  
13 2008. Immediately gets private insurance. Would never  
14 use a Medicaid card when he has private insurance through  
15 Oxford. And what it boils down to, your Honor, again  
16 this is so important, he hasn't -- it's \$10,000 and it's  
17 going to the doctor and getting medicine. So when we  
18 talk about danger to the community, the only danger here  
19 is that he would continue to use Medicaid benefits. But  
20 he wouldn't do it because he has Aetna.

21 And then with respect to risk of flight, I just  
22 want to say something about the overseas ties and travel.  
23 He has traveled ten times since he has been released in  
24 this case, as far as Hawaii. He has come back every  
25 single time and does not have overseas ties or overseas

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1 business. He is a local salesman for Eugene Dozortsev's  
2 wine company. And, in fact, he just picked up an account  
3 in my office building at One Penn Plaza where he sells  
4 cases of wine to Lugo Restaurant. That's what Arthur  
5 does. Arthur has nothing to do with foreign sales of  
6 products or traveling or anything of the like.

7 THE COURT: Sentencing is when?

8 MR. TISCIONE: For Arthur --

9 MR. SAPONE: April 22.

10 MR. TISCIONE: April 22 for Arthur and Nikolai  
11 -- do you remember the sentencing date?

12 MR. ZONE: I don't --

13 MR. TISCIONE: I think it's May 21 for Nikolai.

14 MR. SAPONE: Okay. So then June Sifton put it  
15 on in May.

16 MR. ZONE: I just would want to indicate one  
17 thing. As soon as we have this -- I know that  
18 Mr. Tiscione is indicating that, you know, they should  
19 have known they were committing crimes. The focus of  
20 resolving this case was resolving whatever Medicaid  
21 issues existed, whatever money laundering issues;  
22 whatever issues that are in here were all resolved as  
23 part of this plea.

24 Mr. Dozortsev when I was advised that the  
25 government believed he was committing Medicaid fraud,

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1 immediately canceled his Medicaid coverage; immediately,  
2 okay, for the entire family. And then a couple of months  
3 -- two to three months later, he realizes that he just  
4 can't survive. Financially, he's making very little  
5 money.

6 THE COURT: And so what?

7 MR. ZONE: And so he reapplied and that point  
8 was -- is and was entitled and eligible for that type of  
9 coverage, Judge.

10 THE COURT: All right. I have heard enough. I  
11 think that there are significant enough distinctions  
12 between the two brothers that I am going to do the  
13 following. You are Arthur; right? You are Arthur; okay.

14 You are going to be on complete electronic  
15 monitoring, no going to work. You are not going  
16 anywhere. You are a complete lock down, house arrest  
17 until sentencing.

18 And you are remanded, Nikolai. I cannot accept  
19 -- I think it's almost a complete affront to the Court  
20 the excuses I am hearing about your conduct post-arrest  
21 and post-plea. It's simply not acceptable.

22 MR. ZONE: Judge, may I have a moment?

23 THE COURT: I don't want to hear. No.

24 MR. ZONE: Just one moment.

25 THE COURT: You shouldn't interrupt me.

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1 MR. ZONE: I am sorry.

2 THE COURT: It's unambiguous when defendants  
3 are advised you are not to commit any crimes while you're  
4 out on this bond, if you do so it will be a violation of  
5 your bail conditions and it's also a separate crime;  
6 unambiguous, completely clear. I don't accept your  
7 excuses; remanded.

8 MR. ZONE: May I have one minute?

9 THE COURT: And your bail conditions are  
10 changed. Complete house arrest, electronic monitoring  
11 until sentencing.

12 MR. TISCIONE: Your Honor, the government would  
13 ask that the Court also impose the additional bond of  
14 having the defendant post his house.

15 THE COURT: Wait, so right -- Arthur has the  
16 condominium. What is posted?

17 MR. SAPONE: He lives in a condo apartment here  
18 in Manhattan.

19 MR. TISCIONE: Which is not posted.

20 THE COURT: And where is the -- so there's no  
21 property posted?

22 MR. TISCIONE: There is a property posted but  
23 it's his friend's property.

24 THE COURT: And what does he have to post in  
25 addition?

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1                   MR. SAPONE: The apartment he lives in with his  
2 fiance.

3                   THE COURT: Oh, that's what you want posted?

4                   MR. TISCIONE: That's what I want posted.

5                   THE COURT: Yes, that should be posted; yes.

6 And that can be done --

7                   MR. SAPONE: 444 West 19th Street, New York  
8 City.

9                   THE CLERK: Solely owned by Arthur?

10                  MR. SAPONE: Solely owned by Arthur.

11 Your Honor, just to be clear, if Arthur has to -- and I  
12 hesitate to ask this question given all of the talk  
13 that's gone on --

14                  THE COURT: Go to the doctor's is what you were  
15 going to ask.

16                  MR. SAPONE: -- go the doctor --

17                  THE COURT: Why isn't --

18                  MR. SAPONE: -- or visit his lawyer because  
19 we're preparing for sentencing, in other words, can I  
20 apply to the Court?

21                  THE COURT: Yes.

22                  MR. SAPONE: Thank you.

23                  MR. ZONE: Your Honor, the only -- I just  
24 wanted to add one thing. I was speaking to my client,  
25 okay?

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1                   THE COURT: Okay, yes. You can go ahead.

2                   MR. ZONE: That he canceled his insurance; not  
3 one crime was committed. Not one crime was committed,  
4 your Honor. And then when he was eligible for Medicaid,  
5 he reapplied for Medicaid. This is important that he  
6 wants the Court to --

7                   THE COURT: Okay, thank you. I hear you.

8                   So we need the other suretor up on -- don't we  
9 need -- is his girlfriend on the bond?

10                  MR. SAPONE: She is not.

11                  MR. TISCIONE: Alexander Bromberg is --

12                  THE COURT: Is on the bond?

13                  MR. TISCIONE: Yes.

14                  THE COURT: I am going to choke.

15                  MR. TISCIONE: Sorry, I forgot to mention that  
16 there's so many issues in this case, the other suretor on  
17 the bond was just arrested this morning.

18                  THE COURT: The suretor on Mr. Dozortsev's  
19 bond --

20                  MR. TISCIONE: Yes.

21                  THE COURT: -- was the defendant I arraigned?

22                  MR. TISCIONE: Yes.

23                  THE COURT: So --

24                  MR. TISCIONE: Healthcare fraud.

25                  THE COURT: The tall gentleman. Now, so who --

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1                   MR. TISCIONE: Actually, you know, I very much  
2 apologize, your Honor, but given that, I would ask that  
3 the defendant has to be remanded. There's simply no --  
4 there's no equity in the property.

5                   THE COURT: Well, no, hold on. That  
6 Mr. Bromberg put the property up?

7                   MR. TISCIONE: Yes, yes. That's the property  
8 securing Mr. Arthur Dozortsev's bond.

9                   THE COURT: What did we do with Mr. Bromberg?  
10 Was he --

11                  MR. TISCIONE: He was released on a \$1 million  
12 bond posted with other property.

13                  THE COURT: Well this is new.

14                  MR. SAPONE: Your Honor, I think if we look at  
15 the bail --

16                  THE COURT: So who do you have -- so right now  
17 Bromberg is on this bond.

18                  MR. SAPONE: Well, his property is.

19                  THE COURT: His property. But you have an  
20 additional property which is the property he lives in.

21                  MR. SAPONE: It's the property he lives in with  
22 his fiance and it has equity of \$600,000.

23                  THE COURT: Yes, I will take that.

24                  MR. SAPONE: All right. Thank you. So are we  
25 free to go?

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1                   THE COURT: No, we need his fiance. Did she  
2 sign -- has she signed the bond?

3                   MR. SAPONE: She didn't. Do you want her to?

4                   THE COURT: Yes.

5                   MR. SAPONE: Okay.

6                   THE COURT: She needs to sign it. Is she a --

7                   MR. SAPONE: No, no, but she has no ownership  
8 interest in the apartment. She just moved in with  
9 Arthur.

10                  THE COURT: Oh, oh. So he's the sole owner of  
11 the apartment?

12                  MR. SAPONE: Correct. Correct.

13                  THE COURT: Okay. So he's going to be able to  
14 -- can he use that for collateral? Can he use that?

15                  MR. SAPONE: Yes.

16                  THE COURT: Okay.

17                  MR. SAPONE: So can he be released until I get  
18 the paperwork together? I mean --

19                  THE COURT: Yes.

20                  MR. SAPONE: -- it's right here in Manhattan.

21                  THE COURT: He can sign the bond.

22                  MR. SAPONE: All right.

23                  THE COURT: He needs to sign the bond.

24                  MR. SAPONE: All right. May I?

25                  THE COURT: All right. So you understand,

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1 we've gone over this. Now your bail conditions are you  
2 are on complete house arrest until your sentencing and  
3 you can only leave for approved attorney visits or a  
4 medical emergency. And the property you live in, the  
5 co-op or the condo is going to now be securing your bond.

6 THE DEFENDANT A. DOZORTSEV: Yes, ma'am.

7 THE COURT: And the government can decide what  
8 the want to do about Mr. Bromberg.

9 MR. SAPONE: Okay. Thank you for your  
10 consideration, your Honor.

11 (Matter concluded)

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C E R T I F I C A T E

I, ROSALIE LOMBARDI, hereby certify that the foregoing transcript of the said proceedings is a true and accurate transcript from the electronic sound-recording of the proceedings reduced to typewriting in the above-entitled matter.

I FURTHER CERTIFY that I am not a relative or employee or attorney or counsel of any of the parties, nor a relative or employee of such attorney or counsel, or financially interested directly or indirectly in this action.

IN WITNESS WHEREOF, I hereunto set my hand this 7th day of April, 2009.

  
Rosalie Lombardi  
Transcription Plus II